

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

Crim. Action No.: 2:22-CR-08  
(Judge Kleeh)

ANDREW CORDEL WAGNER,

Defendant.

ORDER ADOPTING MAGISTRATE JUDGE'S AMENDED REPORT AND  
RECOMMENDATION CONCERNING PLEA OF GUILTY IN FELONY CASE [ECF NO.  
33], ACCEPTING GUILTY PLEA, AND SCHEDULING SENTENCING HEARING

On January 27, 2023, the Defendant, Andrew Cordel Wagner ("Wagner"), appeared before United States Magistrate Judge Michael J. Aloï and moved for permission to enter a plea of **GUILTY** to Count One of the Indictment, charging him with Unlawful Possession of a Firearm, in violation of 18 U.S.C. §§ 922(g)(1), 922(g)(3) and 924(a)(2). Wagner stated that he understood that the magistrate judge is not a United States District Judge, and Wagner consented to pleading before the magistrate judge.

This Court referred Wagner's plea of guilty to the magistrate judge for the purpose of administering the allocution, pursuant to Federal Rule of Criminal Procedure 11, making a finding as to whether the plea was knowingly and voluntarily entered, and recommending to this Court whether the plea should be accepted.

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Based upon Wagner's statements during the plea hearing, and the Government's proffer establishing that an independent factual basis for the plea existed, the magistrate judge found that Wagner was competent to enter a plea, that the plea was freely and voluntarily given, that Wagner understood the charges against him and the consequences of his plea, and that a factual basis existed for the tendered plea. The magistrate judge issued an *Amended Report and Recommendation Concerning Plea of Guilty in Felony Case* ("R&R") [ECF No. 33] finding a factual basis for the plea and recommending that this Court accept Wagner's plea of guilty to Count One of the Indictment.

The magistrate judge **released** Wagner on the terms of the Order Setting Conditions of Release [ECF No. 20].

The magistrate judge also directed the parties to file any written objections to the R&R within fourteen (14) days after service of the R&R. He further advised that failure to file objections would result in a waiver of the right to appeal from a judgment of this Court based on the R&R. Neither Wagner nor the Government filed objections to the R&R.

Accordingly, this Court **ADOPTS** the magistrate judge's R&R [ECF No. 33], provisionally **ACCEPTS** Wagner's guilty plea, and

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**ADJUDGES** him **GUILTY** of the crime charged in Count One of the Indictment. The Court **DENIES AS MOOT** the magistrate judge's R&R [ECF No. 32].

Pursuant to Fed. R. Crim. P. 11(c)(3) and U.S.S.G. § 6B1.1(c), the Court **DEFERS** acceptance of the proposed plea agreement until it has received and reviewed the presentence investigation report prepared in this matter.

Pursuant to U.S.S.G. § 6A1 et seq., the Court **ORDERS** the following:

1. The Probation Officer shall undertake a presentence investigation of Wagner, and prepare a presentence investigation report for the Court;

2. The Government and Wagner shall each provide their narrative descriptions of the offense to the Probation Officer by **March 8, 2023**;

3. The presentence investigation report shall be disclosed to Wagner, his counsel, and the Government on or before **April 20, 2023**; however, the Probation Officer shall not disclose any sentencing recommendations made pursuant to Fed. R. Crim. P. 32(e)(3);

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4. Written objections to the presentence investigation report, if any, shall be submitted to the opposing party and to the probation officer on or before **April 27, 2023;**

5. Responses to objections to the presentence investigation report, if any, shall be submitted to the opposing party and to the probation officer on or before **May 4, 2023;**

6. The Office of Probation shall submit the presentence investigation report with addendum to the Court on or before **May 18, 2023;** and

7. Counsel may file any written sentencing memoranda or statements and motions for departure from the Sentencing Guidelines, including the factual basis for the same, on or before **May 25, 2023.**

The Court further **ORDERS** that prior to sentencing, Wagner's counsel shall review with him the revised Standard Probation and Supervised Release Conditions adopted by this Court on November 29, 2016, pursuant to the standing order entered by Chief Judge Groh, In Re: Revised Standard Probation and Supervised Release Conditions, 3:16-MC-56.

The Court will conduct the **Sentencing Hearing** for Wagner on **June 7, 2023, at 11:00 a.m., at the Elkins, West Virginia,** point

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of holding court. If counsel anticipates having multiple witnesses or an otherwise lengthy sentencing hearing, please notify the Judge's chamber staff so that an adequate amount of time can be scheduled.

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to counsel of record and all appropriate agencies.

DATED: March 2, 2023

Handwritten signature of Thomas S. Klee in black ink.

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THOMAS S. KLEE, CHIEF JUDGE  
NORTHERN DISTRICT OF WEST VIRGINIA